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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,129	12/11/2003	Peter A. Chapman	MAVERICK 3.0-004 CONT CON	7852
530	7590	10/06/2006	EXAMINER VERBITSKY, GAIL KAPLAN	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			ART UNIT 2859	

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/733,129

Applicant(s)

CHAPMAN ET AL.

Examiner

Gail Verbitsky

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 10-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>07/19/2006, 07/17/2006</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 4-5, 9-10, 12-13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle et al. (U.S. 5939974) [hereinafter Heagle] in view of Chung et al. (U.S. des.418069) [hereinafter Chung] and May (U.S. 6080972).

Heagle discloses a device in the field of applicant's endeavor comprising a hand-held food thermometer/ probe/ data logger (first unit) communicating by means of RF with a second unit. This would imply that the first and the second unit have an RF transmitter and an RF receiver respectively. The second unit is a computer (col. 11, lines 4-15 and col. 17, lines 31-39), thus, inherently, having a microprocessor and a display. Although, Heagle is silent so as to having a second LCD, it is very well known in the art, that the majority of the modern computers having LCD.

Heagle does not explicitly teach that the probe having a curved section and a flexible communication line, and that the second unit is a hand-held unit, as stated in claim 1, with the remaining limitations of claims 1-2, 4-5, 9, 12-13, 19.

Chung discloses a device in the field of applicant's endeavor comprising a first hand-held unit having a curved rigid probe and a flexible cable (communication line). The curved rigid probe has proximal and distal ends and attached to the line by means

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of a removable plug, as shown in Fig. 1. The pointed probe end is adapted to be inserted into a food of interest. The device has a display displaying food data (i.e., beef, chicken, etc.).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first unit disclosed by Heagle so as to have the curved rigid probe with a plug and a flexible communication line, as taught by Chung, so as to enable the operator to comfortably insert the probe into the food of interest from any position.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first unit, so as to have a display displaying taste preferences, in order to allow the operator to recognize what product is being cooked, and thus, to modify the programming of the cooking process accordingly.

May discloses a device in the field of applicant's endeavor wherein a second unit a hand-held unit (remote portable computer) inherently, having a microprocessor and capable of programming/ calibrating the modes of the food being cooked for well done, rare, etc. (taste preferences) and for different types of food, i.e., poultry, beef, etc. (meat selection). The device is provided with an alarm (noise generating unit). First unit has an LCD display. The second unit is capable to stop/ start cooking (col. 10, lines 3-10), and thus, a cooking timer. The fact that the second unit is a portable computer would imply that it has a display. Although, May is silent so as to having a second LCD, it is very well known in the art, that the majority of the modern computers having LCD.

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The second display shows all the data as shown by the first display, thus, including taste preferences and temperature data.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the second unit disclosed by Heagle, with a second unit, as taught by May, so as to have a portable/ hand-held second unit, as taught by May, in order to allow the second unit to follow the operator and allow the operator to perform other work while waiting for the food being cooked.

3. Claims 3, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle, Chung and May as applied to claims 1-2, 4-5, 9-10, 12-13, 19 above, and further in view of Tymkewicz et al. (U.S. 6000845) [hereinafter Tymkewicz].

Heagle, Chung and May disclose the device as stated above in paragraph 2.

They do not teach the limitations of claims 3, 8.

Tymkewicz discloses a device in the field of applicant's endeavor comprising a microprocessor operative to calibrate a taste preference and choice preference associated with a food being cooked, establishing temperature, monitoring and displaying on (first) LCD the temperature and taste preferences. The device operates in both, Celsius and Fahrenheit.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the functions of the microcontroller/ microprocessor, disclosed by Heagle, Chung and May, so as to have a microprocessor operative to calibrate, establish a temperature setting, as taught by Tymkewicz, in order

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to have more accurate temperature results, and allow to convey the temperature data to the operator.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first unit so as to have a display displaying both Fahrenheit and/ or Celsius temperatures, as taught by Tymkewicz, so as to allow to use the device in Europe should the device be relocated/ exported.

4. Claims 7, 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle, Chung and May as applied to claims 1-2, 4-5, 9-10, 12-13, 19 above, and further in view of Cooper (U.S. 4131786).

Heagle, Chung and May disclose the device as stated above.

They do not explicitly teach the limitations of claims 7, 11, 12.

Cooper discloses a device in the field of applicant's endeavor comprising a first unit and a remote control (second) unit 28 having an on/ off, display, cooking temperature and duration control button 24. All data can be entered and seen on either unit. Time duration/ remaining time can be displayed (col. 4, lines 8-14) on both displays, inherently, including the second unit display.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the second unit so as to display a duration/ remaining time on the second unit display, as taught by Cooper, in order to allow the operator to plan their time accordingly.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the second unit so as to have an on/ off button, so as to allow the operator to remotely control cooking and stop the cooking if needed without visiting the first unit.

5. Claims 14-15, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle in view of Chung, Archard, and May.

Heagle discloses a device in the field of applicant's endeavor comprising a hand-held food thermometer/ probe/ data logger (first unit) communicating by means of RF with a second unit. This would imply that the first and the second unit have an RF transmitter and an RF receiver respectively. The second unit is a computer (col. 11, lines 4-15 and col. 17, lines 31-39), thus, inherently having a microprocessor.

Heagle does not explicitly teach that the probe having a curved section and a flexible communication line, and that the second unit is a hand-held unit, as stated in claim 14, and taste preferences.

Chung discloses a device in the field of applicant's endeavor comprising a first hand-held unit having a curved rigid probe and a flexible cable (communication line). The curved rigid probe has proximal and distal ends and attached to the line by means of a removable plug, as shown in Fig. 1. The pointed probe end is adapted to be inserted into a food of interest. The device has a display displaying a meat selection preference (i.e., beef).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first unit disclosed by Heagle so as to have

the curved rigid probe with a plug and a flexible communication line, as taught by Chung, so as to enable the operator to comfortably insert the probe into the food of interest from any position.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first unit so as to have a display displaying taste preferences, so as to allow the operator to recognize what product is being cooked, and thus, to modify the programming of the cooking process accordingly.

Archard discloses a first hand-held unit displaying taste preferences such as medium, medium rare, rare, well done. Device also has an alarm (noise generating unit).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first unit so as to have a display displaying taste preferences, as taught by Archard, in order to allow the operator to recognize how the food is being cooked and make necessary changes in the cooking programming, if needed.

May discloses a device in the field of applicant's endeavor wherein a second unit a hand-held unit (remote portable computer) inherently, having a microprocessor and capable of programming/ calibrating the modes of the food being cooked for well done, rare, etc. and for different types of food, i.e., poultry, beef, etc. The device is provided with an alarm (noise generating unit). First unit has an LCD display. The second unit is capable to stop/ start cooking (col. 10, lines 3-10), and thus, a cooking timer. The fact that the second unit is a portable computer would imply that it has a



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display. Although, May is silent so as to having a second LCD, it is very well known in the art, that the majority, if not all the modern computers have LCD. The second display shows all the data as shown by the first display, thus, including taste preferences and temperature.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the second unit disclosed by Heagle, with a second unit, as taught by May, so as to have a portable/ hand-held second unit, as taught by May, in order to allow the second unit to follow the operator and allow the operator to perform other work while waiting for the food being cooked.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle, Chung and Archard as applied to claims 14-15, 18 above, and further in view of Cooper.

Heagle, Chung, Archard and May disclose the device as stated above.

They do not explicitly teach the limitations of claim 17.

Cooper discloses a device in the field of applicant's endeavor comprising a first unit and a remote control (second) unit 28 having an on/ off, display, cooking temperature and duration control button 24. All data can be entered and seen on either unit. Time duration/ remaining time can be displayed (col. 4, lines 8-14) on both displays.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the second unit so as to display a duration/ remaining time on the second unit display, as taught by Cooper, in order to allow the operator to plan their time accordingly.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the second unit so as to have an on/ off button, so as to allow the operator to remotely control cooking and stop the cooking if needed without visiting the first unit.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle, Chung and Archard as applied to claims 14-15, 18 above, and further in view of Holling et al. (U.S. 5378874) [hereinafter Holling].

Heagle, Chung, Archard and May disclose the device as stated above.

They do not explicitly teach the limitations of claims 6, 16.

Holling discloses a device in the field of applicant's endeavor comprising a remote (second) unit having an alarm (noise generating device).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device, so as to provide the second unit with an alarm, as taught by Holling, so as to allow the operator to recognize the status of cooking without instantaneously looking at the display, and without attending the first unit, and thus, take necessary actions.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle, Chung and May as applied to claims 1-2, 4-5, 9-10, 12-13, 19 above, and further in view of Holling et al. (U.S. 5378874) [hereinafter Holling].

Heagle, Chung and May disclose the device as stated above.

They do not explicitly teach the limitations of claim 6.

Holling discloses a device in the field of applicant's endeavor comprising a remote (second) unit having an alarm (noise generating device).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device, so as to provide the second unit with an alarm, as taught by Holling, so as to allow the operator to recognize the status of cooking without instantaneously looking at the display, and without attending the first unit, and thus, take necessary actions.

### ***Double Patenting***

9. Claims 1-5, 7-8, 10-19 are rejected on the ground of nonstatutory double patenting over claim 1-13 of U. S. Patent No. 6568848 [hereinafter the patent] since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a wireless remote cooking thermometer having two hand-held units, as claimed by the applicant and the patent.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into the patent No. 6568848. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

### ***Response to Arguments***

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10. Applicant's arguments with respect to claims 1-8, 10-19 have been considered but are moot in view of the new ground(s) of rejection necessitated by the present amendment.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Verbitsky whose telephone number is 571/ 272-2253. The examiner can normally be reached on 7:30 to 4:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571/ 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GKV

Gail Verbitsky

Primary Patent Examiner, TC 2800



September 26, 2006